



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

June 5, 1953

Hon. Allan Shivers  
Governor of Texas  
Austin, Texas

Letter Opinion No. MS-53

Re: Constitutionality of  
House Bill 628.

Dear Governor:

You have requested an opinion on the constitutionality of House Bill 628 prescribing the minimum and maximum salaries of county auditors in counties having a population of 500,000 inhabitants, or more. House Bill 628 provides for a minimum salary in counties having a population of more than 700,000 inhabitants of \$6500 per annum. House Bill 628 also provides that the auditors in counties having a population of 500,000 and not more than 700,000 inhabitants shall receive the minimum salary of not less than \$9900.

Section 56 of Article III of the Constitution of Texas provides in part as follows:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

". . .

"Regulating the affairs of counties, cities, towns, wards or school districts. . ."

It is apparent that the bill in question is regulating the affairs of counties in violation of the Constitution. The Legislature may classify counties upon a basis of population for the purpose of fixing compensation of county officers, yet in doing so the classification must be based upon a real distinction and must not be arbitrary or to give what is in substance a local or special law the form of a general law. The courts recognize that substantial differences in populations of counties may be made a basis of legislation fixing compensation of officers on the theory that the work devolving upon an officer was in some degree proportionate to the population of the county. However, if the Legislature ignores the obvious fact that the work of

Hon. Allan Shivers, page 2 (MS-53)

county officers is proportionate to population and classifies counties in such a way that the compensation of officers of a county having a large population is fixed below the compensation allowed like officers in small counties, such action amounts to fixing a classification which is arbitrary and which has no true relevancy to the purpose of the legislation. Clark v. Finley, 93 Tex. 171, 54 S.W. 343 (1899); Bexar County v. Tynan, 128 Tex. 223, 97 S.W.2d 467 (1936); Miller v. El Paso County, 136 Tex. 370, 150 S.W.2d 1000 (1941); Oakley v. Kent, 181 S.W.2d 919 (Tex.Civ.App. 1944).

Since House Bill 628 authorizes a greater minimum salary to be paid in counties having a population of 500,000 and not more than 700,000 inhabitants than is provided for counties having a population of more than 700,000 inhabitants it is our opinion that House Bill 628 is unconstitutional and violates Section 56 of Article III of the Constitution of Texas.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
John Reeves  
Assistant

JR:am:wb